SUMMARY OF THE ARGUMENT

Studies of high school, college, and professional news media demonstrate the vital importance of uncensored campus newspapers. Research shows that experience in reporting for and editing a campus newspaper provides a unique opportunity for college journalists to develop an understanding of the role of the press. This experience is critical in developing a commitment to the field of journalism as a career, and in acquiring the skills that newspapers find valuable.

Permitting college administrators to censor campus newspapers undermines the goal of encouraging students to mature as journalists and prevents them from learning that they are responsible for what they publish. This Court's decisions on campus freedom of the press support the conclusion that such censorship violates the First Amendment. Permitting a system of prior restraint, as in this case, harms the interests of campus and local readers in seeking relevant and critical coverage of issues in their community, including the administration of the local university. The Seventh Circuit's decision also poses a threat to academic freedom and the exercise of First Amendment rights by faculty members.

ARGUMENT

An official at a public university imposed a system of prior restraint on the publication of petitioners' newspaper. The Seventh Circuit's decision upholding the official's action, if not corrected, will have a chilling effect on the exercise of First Amendment rights by journalists and faculty at public colleges and universities. It will also have a potentially devastating impact on the recruitment and training of tomorrow's professional journalists.

1. This Court has recognized that the First Amendment applies to students at public universities and

colleges. *Healy v. James*, 408 U.S. 169, 182 (1972). The Court has extended First Amendment protection to students working on college newspapers. *Papish v. Bd. of Curators of Univ. of Missouri*, 410 U.S. 667 (1973).

Ten years ago, the Court made clear that university officials violate the First Amendment when they impose viewpoint-based discrimination on funding decisions for student newspapers. *Rosenberger v. Rector and Visitors of the Univ. of Virginia*, 515 U.S. 819 (1995). The Court distinguished cases in which the university was paying for an agent to promote the university's message from cases in which the university was facilitating the speech of student groups. *Id.* at 834. "Having offered to pay the third-party contractors on behalf of private speakers who convey their own messages, the University may not silence the expression of selected viewpoints." *Id.* at 835.

The Seventh Circuit's decision permits a public official to stop publication of a student newspaper on the basis of objections to its contents in direct contravention of the principles articulated in *Rosenberger* and its predecessors. The Court should grant certiorari in order to reaffirm the First Amendment rights of college journalists as well as to protect the interests of faculty members and the readership of campus newspapers. The Court's decision in *Hazelwood School District v. Kuhlmeier*, 484 U.S. 260 (1988), does not and should not be applied at the university level. *See Hazelwood*, 484 U.S. at 273 n.7 (explicitly noting that the Court's decision does not extend to the college and university level).

2. An uncensored college newspaper is vitally important to attracting college students to journalism and providing them with a real-world training ground that prepares them to become professional journalists. The skills that journalists acquire while working at a college newspaper are fundamental to their development into

professionals who are able to make editorial decisions, take responsibility for the stories that are published – and those that are not – and gather and write about the events of the day in an objective manner.

The reporters and editors working on a campus paper learn valuable lessons that prepare them for a career in journalism. Prior experience in journalism is one of the most important factors considered by both small and large newspapers in hiring new reporters. Barbara J. Hipsman & Stanley T. Wearden, *Skills Testing at American Newspapers* 13-14 (Aug. 1989) (paper presented at the Annual Meeting of the Association for Education in Journalism and Mass Communication, Newspaper Division). More than three quarters of newspapers test for writing skills before hiring journalists. *Id.* at 11. In addition to prior journalism experience and writing skills, general reporting ability ranked very high among skills that newspapers listed as most desirable in new hires. *Id.* at 13.

College students acquire more than writing and reporting skills when they work for a campus newspaper. They also learn that they are responsible for what appears on the pages of their publication. For this reason, it has been argued that "the student publication offers the single best avenue for training – superior even to the journalism school ... for a career in professional journalism." Richard J. Peltz, *Censorship Tsunami Spares College Media: To Protect Free Expression on Public Campuses, Lessons from the "College Hazelwood" Case*, 68 Tenn. L. Rev. 481, 482 (2001). This vital experience cannot be acquired at newspapers whose content is controlled by university officials.

Professor Peltz observes that the consequences of applying *Hazelwood* to university journalists would extend "outside the ivy-covered walls. Imagine a generation of college-trained journalists with no practical

experience handling controversial subject matter, nor with any more than an academic understanding of the role of the Fourth Estate in American society." *Id.*

Early exposure to and experience in a realistic journalistic setting is important not only for the training that it provides, but also for the effect that it has on the student reporters' ability to think critically about the proper role and methods of the press. Research demonstrates that early participation on student newspapers influences student journalists' attitudes towards the press and likelihood of committing to a career in journalism. Student reporters with experience working in newsroom become more like professional journalists when asked about their views on civic journalism and on the practices of the news media generally. Michael McDevitt *et al.*, *The Making and Unmaking of Civic Journalists: Influences of Professional Socialization*, 79 Journalism & Mass Commc'n Q. 87, 95-96 (2002). "One experience in particular – working for the campus paper – appears to instill a sense of autonomy" in student journalists. *Id.* at 98. *See also* Jennifer Rauch *et al.*, *Clinging to Tradition, Welcoming Civic Solutions: A Survey of College Students' Attitudes toward Civic Journalism*, 58 Journalism & Mass Commc'n Educator 175, 183-84 (2003).

Research also suggests that "the earlier one decides on journalism as a career, the greater the commitment later on." Wilson Lowrey & Lee B. Becker, *Commitment to Journalistic Work: Do High School and College Activities Matter?*, 81 Journalism & Mass Commc'n Q. 528, 538 (2004). *See also id.* at 539 (noting that an important predictor of the choice to become a journalist is college-level socialization, and that experience with campus media significantly enhances the probability of pursuing a career in journalism).

Extending this Court's holding in *Hazelwood* to college level newspapers would defeat these goals. If university administrators can impose prior restraints on campus newspapers, college journalists will fail to learn the importance of autonomy and professional responsibility because they will be neither autonomous nor responsible. Peltz, 68 Tenn. L. Rev. at 549 ("practical experience with editorial freedom and responsibility is an essential component of an education in journalism"). Not only would college journalists fail to get real-world experience in making and taking responsibility for editorial decisions, they also would not be free to take initiative in reporting because of the chilling effect of the administration's censors.

The threat of censorship of campus papers is not only real, it is growing. Michael W. Hirschorn, *University Efforts to Censor Newspapers Are on the Increase, Student Editors Say*, 33 Chronicle of Higher Educ. at 35-37 (1987). Studies show that high school newspapers suffered a severe chilling effect after *Hazelwood*, avoiding coverage of controversial issues. Carol S. Lomicky, *Analysis of High School Newspaper Editorials Before and After* Hazelwood School District v. Kuhlmeier: *A Content Analysis Case Study*, 29 J. of Law & Educ. 463 (2000); *see also id.* at 473 (finding that students began to self-censor criticism in their publications, eliminating two thirds of the pre-*Hazelwood* levels of critical commentary). Three-fourths of high school principals and advisors acknowledge censoring their schools' newspapers. Lillian Lodge Kopenhaver and J. William Click, *High School Newspapers Still Censored Thirty Years After* Tinker, 78 Journalism & Mass Commc'n Q. 321, 327 (2001). More than a decade after the Court announced its opinion in *Hazelwood*, high school "journalists appear unwilling to oppose the administration in their commentary." Lomicky, 29 J. of Law & Educ. at 471.

A *Hazelwood* regime applied to university students risks turning college newspapers into the timid house organs that most high school newspapers have become. *Id.* at 329. Research shows that 87 percent of high school principals believe that the student newspaper should advance the public relations objectives of the school. *Id.* Half of them disagree with the statement that the newspaper should print a factually accurate story if the publication will embarrass the school's administration. *Id.* Such publications would give college students little incentive or ability to gain the real-world journalism experience that studies show is so crucial in acquiring the skills and commitment necessary for training tomorrow's reporters.

3. The Seventh Circuit's application of *Hazelwood* to campus newspapers will expand the censorship trends identified above to college campuses. *See generally* Lomicky, 29 J. of Law & Educ. at 463-76; *see also* Peltz, 68 Tenn. L. Rev. at 496 (noting that high school students and their advisors self-censored coverage of controversial topics after *Hazelwood*). Yet *Hazelwood* did not alter the regime of *Healy* and *Papish*, and confirms that college-level journalists and newspapers are entitled to the First Amendment rights guaranteed to the professional press.

The Seventh Circuit's application of *Hazelwood* to the university press was erroneous for three reasons: (i) high-school students are younger than college students, and the Court has often found youth to be an important factor in determining the application of Constitutional rights; (ii) the high-school newspaper in *Hazelwood* was part of a classroom curriculum, while the newspaper in this case was not; and (iii) the mission of public universities and the role that they play are different from that of high schools.

First, the Court should grant certiorari in order to correct the Seventh Circuit's error in applying *Hazelwood*, a high-school press freedoms case, to adults. One of the chief rationales the Court offered in *Hazelwood* for permitting educators to control student publications was that the officials needed to be able to "take into account the emotional maturity of the intended audience...." *Hazelwood*, 484 U.S. at 272 (citing such "potentially sensitive topics" as the existence of Santa Claus and discussions of teenage sexual activity). *Compare Widmar v. Vincent*, 454 U.S. 263, 274 n.14 (1981) (noting that "[u]niversity students are, of course, young adults. They are less impressionable than younger students...."). *See also Tilton v. Richardson*, 403 U.S. 672, 686 (1971) (noting the "skepticism of the college student").

The First Amendment rights of children have been limited in recognition of the importance of protecting them from exposure to material that is deemed inappropriate for an immature audience. *Hazelwood*, 484 U.S. at 272; *Bethel Sch. Dist. v. Fraser*, 478 U.S. 675, 684 (1986) (sustaining high school's punishment of student for vulgar speech); *FCC v. Pacifica Found.*, 438 U.S. 726 (1978) (affirming sanctions for "dirty words" broadcast); *Ginsberg v. New York*, 390 U.S. 629 (1968) (upholding prohibition on sale of obscenity to minors); *Bellotti v. Baird*, 443 U.S. 622, 636-637 (1979) (discussing the Court's jurisprudence limiting children's First Amendment rights, citing immaturity). These cases, however, provide no basis for departing from traditional First Amendment principles when the relevant writers and readers are adults. Only one percent of the students enrolled in American colleges and universities are under the age of 18. U.S. Census Bureau Survey, Table A-6, Age Distribution of College Students 14 Years Old and Over, by Sex: October 1947 to 2002, *available at* http://www.census.gov/population/socdemo/school/tabA-6.xls (last viewed October 13, 2005).

Second, the pedagogical reasons for official control of the student press do not apply when the newspaper is not part of any class but is instead an autonomous extracurricular activity. When student-published newspapers are produced in a classroom setting, as part of the curriculum and for academic credit, the Court has recognized that the school should be able to exercise supervisory control over the classroom activity. *Hazelwood*, 484 U.S. at 268-69; *cf. Brown v. Li*, 308 F.3d 939, 949-50 (9th Cir. 2002) (noting that *Hazelwood* applies to core curricular speech, but does not apply to student extracurricular speech, including newspapers). Conversely, when campus newspapers are not part of a classroom exercise, suggestions of pedagogical justification for censorship is unpersuasive. *See Student Gov't Ass'n v. Bd. of Trustees of the Univ. of Massachusetts*, 868 F.2d 473, 480 n.6 (1st Cir. 1989) (rejecting the application of *Hazelwood* to college newspapers); *see also Kincaid v. Gibson*, 236 F.3d 342, 346 n.5 (6th Cir. 2001) (en banc) (noting that "*Hazelwood* has little application" to case involving university officials' confiscation of yearbooks in violation of the First Amendment). "[I]f a college has a student newspaper, its publication cannot be suppressed because college officials dislike its editorial comment." *Joyner v. Whiting*, 77 F.2d 456, 460 (4th Cir. 1973).

Here, the University's President and the Dean of the College complained that the newspaper had published articles that were "irresponsible" and "defamatory." *See* Pet. 5. The president rebuked the publication for criticizing him and for allegedly sullying the reputation of the faculty and the school. *Id.* at 5-6. Such complaints are not pedagogical. In any case, "[p]ublic officers, whose character and conduct remain open to debate and free discussion in the press, find their remedies for false accusations in actions under libel laws providing for redress and punishment, and not in proceedings to

restrain the publication of newspapers and periodicals." *Near v. Minnesota*, 283 U.S. 697, 718-19 (1931).

Third, the public university's mission is fundamentally different from that of a high school, and the power to censor does not advance its legitimate goals. Censorship of college newspapers "risks the suppression of free speech and creative inquiry in one of the vital centers for the Nation's intellectual life, its college and university campuses." *Rosenberger*, 515 U.S. at 836. This Court has observed that:

> The first danger to liberty lies in granting the State the power to examine publications to determine whether or not they are based on some ultimate idea and, if so, for the State to classify them. The second, and corollary, danger is to speech from the chilling of individual thought and expression. That danger is especially real in the University setting, where the State acts against a background and tradition of thought and experiment that is at the center of our intellectual and philosophic tradition.

Id. at 835.

This distinction explains why the Court's "cases dealing with the right of teaching institutions to limit expressive freedom of students have been confined to high schools." *Bd. of Regents of the Univ. of Wisconsin System v. Southworth*, 529 U.S. 217, 239 n.4 (2000) (Souter, J., concurring in the judgment) (citations omitted). The "role and purpose" of high schools, in contrast, are to prepare children to become "members of the Republic" by inculcating in them "the habits and manners of civility." *Bethel Sch. Dist.*, 478 U.S. at 681; *see also West Virginia Bd. of Ed. v. Barnette*, 319 U.S. 624, 637 (1943) (stating that they are "educating the young for citizenship"). The

Court should grant review in order to restore the freedoms that are so central to the flourishing "intellectual and philosophic tradition" at this Nation's colleges and universities.

4. In addition to the real-world training ground that it provides, an uncensored college press is critically important in providing the services that any newspaper provides to its readership, namely news about the community and its public officials. The imposition of prior restraints on the press was anathema to the Framers, and the need for a free press is no less vital or relevant on a college campus than anywhere else. "[L]iberty of the press, historically considered and taken up by the Federal Constitution, has meant, principally although not exclusively, immunity from previous restraints or censorship." *Near*, 283 U.S. at 716. Such freedom allows the press to fulfill its role as a "watchdog" that alerts its readers to wrongdoing by officials.

"Clearly the watchdog comprises part of the American tradition of freedom of the press. Judicial recognition of the importance of the press' institutional function is firmly set in First Amendment case law." Timothy W. Gleason, *The Watchdog in Nineteenth Century Libel Law: A Common Law Concept of Freedom of the Press* at 4 (Aug. 1986) (paper presented at the Annual Meeting of the Association for Education in Journalism and Mass Communication, Law Division). When university reporters turn the spotlight of the press onto campus officials and faculty in order to scrutinize and criticize their actions, they are fulfilling their obligations as journalists and are as worthy of First Amendment protections as their peers at mainstream newsrooms across the country.

The Seventh Circuit's imposition of the *Hazelwood* regime on university journalists will harm college journalists' ability to cover controversial issues, and thus

will handicap their readers' ability to find out about important issues on campus. Currently, college newspapers cover national and international news as well as local issues relevant to the campus community. *See* Peltz, 68 Tenn. L. Rev. at 481-82; Sylvia Spann, *The Student Newspaper in a Study Skills Class*, 18 Teaching English in the Two-Year College 38 (1991); *see also Student Activities Coverage: Mainframe of School Publications*, 21 Commc'n: Journalism Educ. Today vol. 2 (1987) (finding that roughly half of college newspaper coverage is devoted to campus news). College reporters "test the boundaries and look for their own sense of ethical behavior," and are relied upon (and expected to) act as an impetus for campus dialogues. John Jasinski, *As They See It....: College Newspapers May Not Look the Same to Campus Administrators*, 33 College Media Review 8, 11 (1994).

Under the *Hazelwood* regime, campus newspapers will not serve their readers by reporting the undistorted news. University officials will subject the campus newspapers to overt forms of censorship. Peltz, 68 Tenn. L. Rev. at 497-98 (citing examples of the "censorship tsunami" that swept across high schools after *Hazelwood*). And campus newspapers will frequently engage in self-censorship. *See* Lomicky, 29 J. of Law & Educ. at 473 (concluding that after *Hazelwood*, many high school newspapers engaged in self-censorship).

When college reporters criticize faculty and school officials, they are sometimes able to spur reform. Such criticism undoubtedly is the reason why some university officials are eager to have the power to censor such coverage, but it is not a valid justification for abridging campus freedom of speech and of the press. Under the *Hazelwood* regime, college journalists "could become increasingly complacent, unwilling to go after controversial stories in the student newspaper and unwilling to tackle controversial subjects and events...."

Peltz, 68 Tenn. L. Rev. at 534. Without such experience during college, it would be less likely "that the same college editor as a professional journalist would aggressively pursue" similarly controversial stories regarding government officials. *Id.* at 535.

5. The logic of the Seventh Circuit's opinion is not confined to student newspapers, or even to students. An extension of the *Hazelwood* rule to the university level would also chill faculty members' exercise of First Amendment rights. The *Hazelwood* opinion has been used in the lower courts to restrict teacher freedoms. Peltz, 68 Tenn. L. Rev. at 483 (noting that "*Hazelwood* has served as a springboard for lower courts to allow executive inroads not only into other student constitutional freedoms, but also into ... teachers' academic freedom.").

The Seventh Circuit's extension of *Hazelwood* to the college level could be expected to have a similar effect on university teachers. Peltz, 68 Tenn. L. Rev. at 534 (noting that "there would be little reason to think that the tradition of academic freedom in American higher education – despite the approval of case law – is any more than a professional courtesy that college administrators may lawfully disregard on pedagogical grounds") (citation omitted). The Supreme Court should grant review in order to forestall such an outcome, and to reaffirm the view expressed in *Healy* that:

> [T]he precedents of this Court leave no room for the view that, because of the acknowledged need for order, First Amendment protections should apply with less force on college campuses than in the community at large. Quite to the contrary, the vigilant protection of constitutional freedoms is nowhere more vital than in the community of American schools. The

> college classroom with its surrounding environs is peculiarly the "marketplace of ideas," and we break no new constitutional ground in reaffirming this Nation's dedication to safeguarding academic freedom.

Healy, 408 U.S. at 180-81 (internal quotation marks and citations omitted).

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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No. 05-377

In the Supreme Court of the United States

MARGARET L. HOSTY, JENI S. PORCHE, AND STEVEN P. BARBA,

Petitioners,

v.

PATRICIA CARTER,

Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit

Brief of *Amici Curiae* Student Press Law Center, Associated Collegiate Press, College Media Advisers, Community College Journalism Association, Society for Collegiate Journalists, Reporters Committee for Freedom of the Press, American Society of Newspaper Editors, National Newspaper Association, Newspaper Association of America, Society of Professional Journalists, Associated Press Managing Editors, College Newspaper Business and Advertising Managers, National Federation of Press Women, National Lesbian and Gay Journalists Association and the Independent Press Association/Campus Journalism Project in Support of Petition of Margaret L. Hosty, Jeni S. Porche, and Steven P. Barba for Writ of Certiorari

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Brief of *Amici Curiae* in Support of Petition of Margaret L. Hosty, Jeni S. Porche, and Steven P. Barba for Writ of Certiorari

INTEREST OF *AMICI CURIAE* IN THIS CASE[1]

The *Amici Curiae*'s Interest

Amici, identified in the attached Appendix, represent student media, journalism educators and professional journalists. These individuals and organizations come to this Court to voice their grave concern about the consequences of the decision of the United States Court of Appeals for the Seventh Circuit entered in this case. Because of the exceptional importance of this case for the future of free expression and thoughtful debate on public college and university campuses and the training and preparation of young journalists, *Amici* respectfully request the Court to review, reconsider and reject the ruling.

STATEMENT OF FACTS

On November 1, 2000, Patricia A. Carter, dean of student affairs at Governors State University, called the printer of the student newspaper, the *Innovator*, and demanded that she or another GSU official be allowed to read and approve the newspaper prior to publication. The

[1] Pursuant to Supreme Court Rule 37.6, the *Amici Curiae* state that no counsel for any party authored this brief in whole or in part, nor did any person or entity, other than the *Amici Curiae*, their members, and their counsel, make a monetary contribution to the preparation or submission of this brief. Counsel of record for all Petitioners and Respondents have consented to the filing of this brief.

Innovator's student editors refused Carter's demands. The *Innovator*, which had published a number of stories and editorials critical of the GSU administration just prior to the censorship, has not been published since.

SUMMARY OF ARGUMENT

The *Hazelwood* First Amendment standard was created specifically for high school student expression and is inappropriate for college and university students. This country's intellectual legacy exemplifies the fundamental role the First Amendment has played in preserving the "marketplace of ideas" on our college campuses. Extension of *Hazelwood*'s standard to college campuses — and specifically to college student media — would have disastrous consequences. The *Hazelwood* standard is vague and difficult to apply outside the specific context in which it arose. Based on our observations of *Hazelwood*'s impact on student journalism at public high schools, *amici* fear that the extension of *Hazelwood* to college campuses will result in a significant increase in threats of censorship and the curtailment of debate on controversial issues, as well as meaningful criticism of government officials and policies. Indeed, less than four months after the *Hosty* decision was handed down, its effect is already being felt beyond the Seventh Circuit.

ARGUMENT

Introduction

In *Hazelwood School District v. Kuhlmeier*, 484 U.S. 260 (1988), this Court explicitly left open the question of whether the First Amendment standard it adopted for school-sponsored speech of school children at the high school and

elementary school level would be appropriate with respect to censoring such speech by students attending public colleges and universities. Because of the growing confusion and conflict among the lower courts on this important question, *amici* believe the time has come for this Court to provide an answer.

In this case, the Seventh Circuit held that both the framework[2] of the *Hazelwood* decision — as well its deference to school officials acts of censorship[3] — should be applied to limit adult student speech in a subsidized student newspaper on a public college or university campus. The Seventh Circuit's ruling cannot be reconciled with this Court's decision in *Rosenberger v. Rectors and Visitors of the University of Virginia*, 515 U.S. 819 (1995), in which the Court held that the First Amendment prohibits a public university from denying funding to a student publication because of its religious or political message. Under the Seventh Circuit's decision in *Hosty*, once the student publication at issue in *Rosenberger* accepted any funding, the university could demand both the right to review the publication and to censor its content as a means of disassociating the school from political controversy.

For almost two centuries, editorially independent, student-edited publications at public and private colleges and universities have been a vital component of campus life in

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2 *Hosty v. Carter*, 412 F.3d 731, 735 (7th Cir. 2005) (en banc).

3 *Id.* at 734-735. ("To the extent that justification depends on … the desire to ensure 'high standards for the student speech that is disseminated under [the school's] auspices' … but also the goal of disassociating the school from 'any position other than neutrality on matters of political controversy,' there is no sharp difference between high school and college papers.") (citations omitted).

the United States.[4] As counterparts to the professional media in American society at large, college journalists act as independent watchdogs of student governments and university administrators, ensuring that student and public money is wisely spent, policy decisions thoughtfully made and campus justice equitably administered. A key part of virtually every university campus in the nation,[5] college student newspapers play a crucial role in ensuring a true "marketplace of ideas" exists at an institution of higher education. As a supplement to the professional media, college journalism also serves the wider community by monitoring the administration of higher education. College students have a greater stake than anyone in the conduct of government on campus and they have unparalleled access to campus officials and information. Student news organizations are an important training ground for professional journalists.[6]

Most public college student news organizations rely primarily on advertising revenue to support their activities, with less than 28 percent reporting they receive any financial assistance from their college or university's general funds.[7]

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[4] The student newspaper at Miami University of Ohio, *The Miami Student*, claims to be the oldest student newspaper in the United States, established in 1826. From "About Us" on *The Miami Student* Web site (http://miamistudent.collegepublisher.com).

[5] There are approximately 1,627 daily and weekly college student newspapers currently published on American college and university campuses. *Editor & Publisher International Yearbook 2005* at 17-36.

[6] Richard J. Peltz, *Censorship Tsunami Spares College Media: To Protect Free Expression on Public Campuses, Lessons From The 'College Hazelwood' Case*, 68 Ten. L. Rev. 481, 481-482 (2001).

[7] In 2005, 98 percent of college and university newspapers reported revenue from advertising, with 52.7 percent reporting that ad sales accounted for more than half of their annual revenue. *Campus*